IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 8TH MARCH 2007 / 17TH PHALGUNA 1928

Crl.MC.No. 367 of 2007()

CC.132/2006 of JUDL.MAGISTRATE OF FIRST CLASS-II, CHENGANNUR
OR NO.134/05 OF EXCISE RANGE OFFICE, CHENGANNUR, ALAPPUZHA DISTRICT.

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PETITIONER: ACCUSED NO.3

RATHEESH S., AGED 32 YEARS,
S/O. SARASIJAN, KOMALATH HOUSE,
KATTACHIRA MURI, BHARANIKAVU VILLAGE,
MAVELIKKARA, ALAPPUZHA DISTRICT.

BY ADV. SRI.C.C.THOMAS

RESPONDENTS: COMPLAINANT

STATE OF KERALA, REPRESENTED BY
EXCISE INSPECTOR, EXCISE RANGE OFFICE,
CHENGANNUR, ALAPPUZHA DISTRICT, REP. BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U. NAZAR.

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 08/03/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

CRL.M.C.NO. 367 OF 2007

Dated this the 8th day of March, 2007

ORDER

The petitioner faces indictment in a prosecution under Sec.56(b) of the Kerala Abkari Act. The allegations relate to the findings on search of a toddy shop by the officials of the Excise Department. The allegation is raised under Sec.56(b) of the Abkari Act which is a summons offence. In the light of the decision in **Adat Prasad v. Rooplal Jindal** (2004 (3) KLT 382) which supersedes **K.M. Mathew v. State of Kerala** (1992 (1) KLT 1), the petitioner has no option to claim premature termination of the proceedings by discharging him or by dropping of proceedings. The petitioner has therefore come to this Court to claim premature termination of the proceedings by invoking the powers under Sec.482 of the Cr.P.C.

2. The petitioner contends that he is not even allegedly the licensee or an employee of the licensee. Even if the entire materials were gone through, there is no allegation which can

bring him within the sweep of Sec.56(b) of the Abkari Act. In these circumstances, it is prayed that powers under Sec.482 of the Cr.P.C. may be invoked to quash the proceedings.

3. Notice was given to the learned Public Prosecutor. The learned Public Prosecutor was requested to take instructions and point out to the Court whether there is any specific allegation or material relied on in support of such allegations to show that the petitioner is liable under Sec.56(b) of the Abkari Act as the licensee or an employee of the licensee.

4. The learned Public Prosecutor, after perusing the records in detail and after taking instructions, fairly submits that there is no allegation that the petitioner is the “ ” of the shop in question. But the learned Public Prosecutor fairly submits that there is no admissible data in support of that allegation. The learned counsel for the petitioner points out and the learned Public Prosecutor concedes that there is no better material and the only allegation is the hearsay assertion of the two witnesses that the petitioner is reputed to be running the toddy shop.

5. I fail to understand how and why on such material a prosecution should be launched against the petitioner. The Charging Officer does not appear to have applied his mind at all

to the vitally relevant circumstances. I am totally dissatisfied with the nature of the charge that has been laid against the petitioner. There is not even an allegation that the licensee is only a name lender to the petitioner for the running of the toddy shop.

6. It follows from the above discussions that in the total absence of any semblance of a valid allegation or data in support of such allegation, the prosecution against the petitioner must fail. Permitting continuance of this prosecution would be a clear case of abuse of process of court leading to miscarriage or failure of justice.

7. In the result:

(i) This Crl.M.C. is allowed.

(ii) C.C.No.132/06 before the Judicial Magistrate of the First Class-II, Chenganuur, as against the petitioner is hereby quashed.

Sd/-

(R. BASANT, JUDGE)

Nan/

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P.S. to Judge

The short contention of the petitioner is that he is neither a licensee nor an employee of the licensee even allegedly. The short contention is that he is a " " - one who runs the toddy shop.

2. The learned counsel points out that this is a transparently vexatious allegation and no material whatsoever has been collected from any one to support this allegation.

3. Heard. Admitted. The learned Public Prosecutor shall take instructions. He shall get a specific statement from the charging officer as to the material on which the petitioner is sought to be proceeded against as an accused.

4. Call on 1/3/2007.

(R. BASANT, JUDGE)

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